

T/BR

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR CHILD BENEFIT

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONER

Decision CF 1/82

1. Our decision is as follows:-

- (i) that the original **decisions of the insurance officer awarding** the claimant child benefit and an increase of child benefit in respect of his son, Russell, should be reviewed because there has been a relevant change of circumstances since those decisions were given; Child Benefit (Determination of Claims and Questions) Regulations 1976, regulation 9(1)(b); and
- (ii) that the said decisions should be revised so that
 - (a) child benefit is not payable for Russell from and including 13 August 1979 because from that date Russell has neither lived with the claimant throughout any week nor has he been ordinarily living with him throughout at least one day a week, and he has from the aforesaid **date, and** during each of the eight weeks preceding the same, throughout at least one day in each week been in the care of a local authority in prescribed circumstances; Child Benefit Act 1975, Schedule 1, paragraph 1, and Child Benefit (General) Regulations 1976, regulation 16; and
 - (b) an increase of child benefit is not payable from and including 13 August 1979 because the claimant has from that date not been entitled to child benefit; Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976, regulation 2(2).

2. This is an appeal by the claimant from a decision of a local tribunal dated 21 July 1980. The appeal was heard by a Tribunal of Commissioners on 16 February 1982. Mr R Drabble of counsel, instructed by Mr **Nicholas** Warren, Solicitor of the Supreme Court, acting for the Family Rights Group, represented the claimant, and Miss K Lee of the Solicitor's Office, Department of Health and Social Security, represented the insurance officer. We are indebted to them both for their careful and helpful arguments.

3. On 28 February 1979 the claimant notified the Department of Health and Social Security that his son, Russell, in respect of whom he was in receipt of child benefit and an increase of child benefit, had that day been taken into the care of the local authority. The claimant returned his order books with his notification.
4. Subsequent enquiries made of the Director of Social Services revealed that Russell had first been remanded in care on 1 February 1979 under section 23 or 29(3) of the Children and Young Persons Act 1969, and that a care order under section 7(7) of that Act had been made on 28 February 1979. It was also confirmed that the claimant was regularly contributing towards Russell's maintenance whilst in care.
5. The awards of child benefit and an increase of child benefit seem to have been informally terminated with effect from 26 March 1979, and arrears of both benefits up to and including 25 March 1979 were paid to the claimant. There is no indication that the claimant objected to payment ceasing on that date.
6. Under the terms of the care order Russell was permitted to spend 'institutional holiday periods' at home with the claimant. Such holiday periods terminated on a Sunday, when Russell was required to return to the institution by 9 00 pm.
7. On 26 September 1979 the claimant claimed child benefit and an increase of child benefit in respect of three periods. An award was made in respect of the inclusive period from 23 July 1979 to 12 August 1979, but not in respect of the inclusive periods from Friday 25 May 1979 to Sunday 3 June 1979 or from Wednesday 22 August 1979 to Sunday 2 September 1979 "because these are not complete child benefit weeks (i.e. midnight of Sunday one week to midnight Sunday the next week)".
8. On 3 December 1979 the insurance officer reviewed his original decisions awarding child benefit and an increase of child benefit in respect of Russell because there had been a relevant change of circumstances since those decisions were given. His revised decision was to the effect that, by virtue of the provisions of paragraph 1 of Schedule 1 to the Child Benefit Act 1975 ("the Act"), regulation 16(1) of the Child Benefit (General) Regulations 1976 ("the Regulations"), and regulation 2(2) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976, neither child benefit nor an increase of child benefit were payable to the claimant from and including 13 August 1979.
9. The claimant appealed to the local tribunal against the insurance officer's revised decision in respect of the inclusive periods from 25 May 1979 to 3 June 1979 and from 22 August 1979 to 2 September 1979 albeit such revised decision does not cover the earlier period. In the event the tribunal appear to have dismissed the appeal in toto without **adverting** to the above irregularity. Manifestly, the period which is before us is that from 22 August 1979 to 2 September 1979, (both dates included), although the same principle of law applies equally to the inclusive period from 25 May 1979 to 3 June 1979.

10. The placing of Russell in care amounted to a relevant change of circumstances. The conditions for review under regulation 9 of the Child Benefit (Determination of Claims and Questions) Regulations 1976 were satisfied, and the decisions to award child benefit and an increase of child benefit fell to be reviewed.

11. By virtue of paragraph 1(c) of Schedule 1 to the Act, together with regulation 16(1) and (5) of the Regulations, a claimant is not entitled to child benefit in any week if throughout any day in that week a child is in the care of a local authority as the subject of an order made under the Children and Young Persons Act 1969. Russell was remanded into care on 1 February 1979 and a care order (still continuing) was made on 28 February 1979. The claimant is not entitled to child benefit unless assisted by regulation 16(6) which provides:-

"(6) A person shall not be disentitled to benefit in respect of a child for any week by virtue of the fact that such paragraph (a) (b) or (c) of paragraph 1 of Schedule 1 to the Act (except where regulations otherwise provide no person to be entitled to benefit in respect of a child for any week if in that week the child is in detention, care etc) applies to that child -

(a) unless that week is in the 9th or a subsequent week in a series of consecutive weeks in which any of those sub-paragraphs have applied to that child; or

(b) notwithstanding that that week is the 9th or a subsequent week in a series of consecutive weeks in which any of those sub-paragraphs have applied to that child, if -

(i) that week is one throughout which that person has the child living with him; or

(ii) that week is one during which that person has had the child living with him throughout at least one day, being a day which immediately follows or precedes a week throughout which that person has had the child living with him; or

(iii) as at that week that person establishes that he is a person with whom the child, while the said sub-paragraph (a), (b) or (c) applies to him, ordinarily lives throughout at least one day in each week".

12. Section 24(1) of the Act defines 'week' as "a period of seven days beginning with a Monday". This definition is carried into the Regulations by regulation 1(2) "unless the **context otherwise requires**".

13. During the period with which we are concerned, and, for that matter, during the period from 25 May 1979 to 3 June 1979 Russell, was required to return to the institutional home by 9 00 pm on the final Sunday. The result was that, although he had been with the claimant for some 12 days, he could not be said to have resided with him for a complete week, if, that is, a week is to be interpreted as extending from midnight Sunday/Monday to the following midnight Sunday/Monday. Not surprisingly, Mr Drabble argued that the word "week" should not be interpreted in this strict manner. The relevant legislation spoke of a "week" and not "a period between midnight on Sunday night and midnight of the succeeding Sunday night". Had it intended that an inflexible period of time should apply, it would have expressly so provided, as it had expressly done (albeit the relevant day was Saturday, not Sunday) under section 182(1) of the Mines and Quarries Act 1954, section 74 of the Shops Act 1950 and section 90(1) of the Offices, Shops and Railway Premises Act 1963. The word "week" was, according to Mr Drabble, to be regarded as an elastic word, indicative of an approximate period of time only. Parliament intended the interests of the child to be paramount. The purpose of the relevant regulation was frustrated if, as a result of the requirement that the child return to the institutional home by 9 00 pm, the claimant, notwithstanding that he had maintained the child for 12 days, should be unable to claim benefit for any period.

14. In the alternative, Mr Drabble submitted that the doctrine of 'de minimis non curat lex' should be applied. The principle was considered in Decisions R(S) 18/53 and R(S) 1/66, and although in those particular cases the periods concerned were not regarded as being so trifling that they might properly be ignored, this did not mean that the principle could not be applied in the present instance. Russell was during the relevant period living and being maintained at home from midnight Sunday to 9 00 pm the following Sunday. The failure to comply with the strict requirement by a mere 3 hours out of a total of 7 days could reasonably be disregarded as being negligible.

15. Miss Lee submitted that the term 'week' was subject to strict interpretation **"seven days beginning with a Monday"**, as stated in Section 24(1), meant midnight Sunday/Monday to the midnight Sunday/Monday next. During the period under appeal Russell had not resided with the claimant for this length of time, and accordingly, the claimant was not entitled to child benefit. Section 4(1) of the Act specifically referred to Schedule 1, which excluded entitlement to child benefit in certain cases. Regulation 16(6) contained exceptions to the statutory rule, and in consequence was subject to strict interpretation. Miss Lee did not accept that the predominant policy of the statutory provisions was to reimburse a parent for the cost of a child in care during periods of home-leave. The cost of a child was incurred at the place where it was fundamentally based. In the present case, Russell continued to be in care, even during a period of home-leave.

16. On the definition of a week we accept the submissions of Miss Lee and reject those of Mr Drabble. We accept **as correct the statement** contained in paragraph 5 of the unreported decision on Commissioner's File C.F. 35/1979:

"Section 24 of the Child Benefit Act 1975 defines 'week' as a period of 7 days beginning on Monday, which means midnight Sunday/Monday to the midnight Sunday/Monday next. This definition is

carried into the Regulations by regulation 1(2) 'unless the context otherwise requires'".

In our view, the context does not "otherwise require" in the relevant Regulations, and accordingly the definition of a week is as set out above. We are reinforced in this conclusion by the use of the word "throughout" in connection with "week", suggesting as it does that the residence with the claimant shall be not less than a full week.

17. Miss Lee accepted the doctrine of 'de minimis non curat lex', as stated by Mr Drabble, but argued that its application was a question of degree on the facts. In the present case, the period of 3 hours was too long a time to allow the doctrine to be invoked. We agree. Five or 10 minutes would, for example, fall within the rule; but not 3 hours.

18. It follows that, as Russell was not living with the claimant throughout a statutory week, child benefit is not payable for the inclusive period from 22 August 1979 to 2 September 1979. In addition an increase of child benefit is not payable for the same period because the claimant is not entitled to child benefit; Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976, regulation 2(2).

19. The claimant's appeal is accordingly dismissed.

(Signed) D G Rice
Commissioner

(Signed) I Edwards-Jones
Commissioner

(Signed) R F M Heggs
Commissioner

Date: 19 April 1982

Commissioner's File: C.F. 35/1980
C I O File: I.O. 36/CHB/80
Region: C B C Washington